

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CITIZENS INSURANCE COMPANY
OF AMERICA,

Plaintiff,

v.

ALEX MOYER, JR., et al.,

Defendants.

CIVIL ACTION NO. 04-73909

DISTRICT JUDGE BERNARD A. FRIEDMAN

MAGISTRATE JUDGE DONALD A. SCHEER

ORDER

Defendants' Motion to Strike Witnesses and Exhibits was referred to the undersigned magistrate judge for hearing and determination. The parties appeared, by counsel, for hearing on May 7, 2007. Having reviewed Defendants' Motion, together with Plaintiff's Response, and having heard the arguments of counsel, I find that the Motion should be denied, but that Defendants are entitled to interview and/or depose Ralph Sprake-Jones, Francisco Esparza, Steven Thompson and Mike Greenlee, and any additional third party witnesses upon whom Plaintiff intends to rely in connection with the introduction of exhibits or testimony relating to its investigation of Defendants.

The process of discovery in this action has been difficult and contentious. With respect to the particular issues raised in the instant Motion, I am satisfied that neither Plaintiff or Defendants have done all that could reasonably be expected to avoid the current impasse. Insufficient time remains before the presently assigned trial date to permit the completion of Plaintiff's reasonable investigation and discovery as described in the Motion.

The striking of evidence is a substantial sanction, and tends to undermine the fundamental policy of the law favoring disposition of disputes upon the merits. Accordingly, Defendants' Motion to Strike Witnesses and Exhibits is denied, subject to the following:

1. Within seven (7) days of the date of this Order, counsel for Plaintiff shall provide to counsel for Defendants the current/last known addresses and telephone numbers for the above-named witnesses. Counsel for Defendants shall utilize such information solely for the purposes of investigation, discovery and trial preparation in this action.

2. Within seven (7) days from the date of this Order, counsel for Plaintiff shall provide to counsel for Defendants the name, current/last known address and telephone number of every additional witness whose testimony shall be relied upon by Plaintiff in the presentation of evidence of any investigation of the Defendants.

3. Plaintiff is ordered to cooperate fully with Defendants in scheduling the depositions of the witnesses described in Paragraphs 1 and 2, above, which depositions shall be concluded within forty-five (45) days following the transfer of information relating to those witnesses, as ordered herein.

4. Upon consultation with the assigned district judge, the trial of this matter is adjourned to August 28, 2007.

5. Failure of Plaintiff to cooperate fully with Defendants' counsel in connection with the completion of the discovery described herein may result in an Order Striking Witnesses and/or Exhibits relating to Plaintiff's investigation of Defendants.

All of which is Ordered this 9th day of May, 2007.

s/Donald A. Scheer
DONALD A. SCHEER
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

I hereby certify on May 9, 2007 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on May 9, 2007. **None.**

s/Michael E. Lang
Deputy Clerk to
Magistrate Judge Donald A. Scheer
(313) 234-5217